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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/605,812	06/28/2000	Steven R. Chalmer	EMS-00801	5356
52427 7590 01/17/2007 MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581				
			EXAMINER TO, JENNIFER N	
			ART UNIT 2195	PAPER NUMBER
			MAIL DATE 01/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/605,812

Applicant(s)

CHALMER ET AL.

Examiner

Jennifer N. To

Art Unit

2195

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

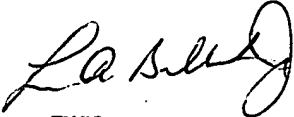
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-3, 5-14, 16-20, 22-31, 33 and 34.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

In the remark with respect to claims 9, and 26, applicant argued that Deng fails to teach multiple schedulers, and choosing a second scheduler from a plurality of schedulers and switching during run time from using a first scheduler to schedule tasks to using the second scheduler to schedule tasks.

Examiner disagreed with applicant argument with respect to the limitation of multiple schedulers. Deng clearly teaches multiple schedulers (fig. 1, OS scheduler, time sharing scheduler, RM-PCP scheduler, EDF-SBP scheduler). In addition, Deng teaches that different applications to be scheduled by different scheduling algorithms (introduction section, 2nd paragraph, lines 5-6). Scheduling algorithms are programs that perform scheduling operations. Schedulers are also programs that perform scheduling operations. Therefore scheduling algorithms are schedulers. Thus, Deng teaches multiple schedulers.

Examiner disagreed with applicant argument with respect to the limitation of choosing a second scheduler from a plurality of schedulers and switching during run time from using a first scheduler to schedule tasks to using the second scheduler to schedule tasks. The claims language weren't clear who is performing what functions (i.e. who choosing which scheduler to processes the tasks), or how the operation is achieved (i.e. when the switching occurred, suspending the first scheduler, or continuing executing the first scheduler while invoking the second scheduler). For this reason, examiner interpreted the claim as broad and reasonable as possible. Deng teaches choosing a second scheduler from a plurality of schedulers (the OS scheduler itself is a first scheduler that processing non-real-time application when a task of a non-real-time application released (section 3.1, 4th paragraph), the OS scheduler invoking (choosing) the server scheduler when a task of a real-time application is released (section 3.1, 5th paragraph) and switching during run time from using a first scheduler to schedule tasks to using the second scheduler to schedule tasks (switching from the OS scheduler processing the non-real-time application tasks to the server scheduler processing real-time application tasks). Therefore, Deng teaches choosing a second scheduler from a plurality of schedulers and switching during run time from using a first scheduler to schedule tasks to using the second scheduler to schedule tasks.

In the remark with respect to claims 1, and 18, applicant argued that Deng fails to teach multiple schedulers, and choosing a second scheduler from a plurality of schedulers and switching during run time from using a first scheduler to schedule tasks to using the second scheduler to schedule tasks. Applicant also argued that Perotto fails to teach multiple schedulers, and each scheduler has a corresponding program counter.

Examiner disagreed with applicant argument with respect to Deng teaching of multiple schedulers, and choosing a second scheduler from a plurality of schedulers and switching during run time from using a first scheduler to schedule tasks to using the second scheduler to schedule tasks (see above explanation).

Examiner disagreed with applicant argument with respect to Perotto fails to teach multiple schedulers, and each scheduler has a corresponding program counter. Perotto teaches multiples scheduler (multiple tasks). According to Perotto, each task comprises a sequence of instructions. Thus each task itself is a program that scheduled a sequence of instruction. Schedulers are also programs that perform scheduling operations. Therefore tasks referred in Perotto are schedulers. Perotto also teaches that each of the tasks has a corresponded program counter to keep track of its instruction sequence (col. 4, lines 1-10). Thus, Perotto teaches teach multiple schedulers, and each scheduler has a corresponding program counter.

In addition to the response to applicant argument with respect to the teaching Deng and Perotto, examiner also would like to introduce applicant with another reference (Endo et al. (U.S. Patent No. 6615303)) that may be used in the future to show the deficiencies of Deng with respect to claims 1 and 18. Endo disclosed a system that switching between operating systems and their scheduler by storing and loading a register value/address.